IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.371 OF 2005
IN
SUIT NO.78 OF 2000

Mr.Rajesh Shah ....Appellant
Ori.Deft.2

V/s.

Mrs.Sushma Kishor Mehta & Ors. ....Respondents
Ori.Plffs.

Mr.Shailesh Shah i/b M/s.S.B. Kotak & Co. for the Appellant.

Mr.Virag Tulzapurkar i/b M/s.Thakore Jariwala & Co. for Respondent Nos.1 and 2.

Ms.J.M. Sidhawa for Respondent No.3.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 20TH APRIL, 2005.

P.C. :

1. This is an Appeal against the order of the learned single Judge disposing of the suit in terms of the consent terms dated 15th March, 2005. The said order also permitted certain amendments to be carried out. Clause 1 of the minutes of the order recorded that the suit as against the Appellant, who was Defendant No.2 is dismissed.

2. The suit was filed by Respondent Nos.1 and 2 against the Appellant and Respondent Nos.3 and 4 inter-alia for a declaration that Respondent Nos.1 and 2 are the owners of the property ; that Respondent No.3 is a trespasser and therefore, has no right, title or interest in respect of the suit property and for possession. A declaration is also sought that the Appellant/Defendant No.2 does not have and has not acquired any rights of any nature whatsoever in respect of the suit property or F.S.I. in respect thereof.

3. The Appellant's grievance is that the impugned order was passed without notice. The grievance to that extent is justified and we therefore heard the Appellant. We do not see any reason why the learned single Judge not to have taken the consent terms on record and passing the order in terms thereof.

4. The Plaintiffs have consciously dropped the Appellant from the suit. The Respondents therefore must face the consequences, if any, for the same. The consent terms no doubt contain declarations including those in Clauses 14, 15 and 17 thereof which purport to affect the rights of the Appellant. This can never

be done. Any declarations that may be made by the parties to the consent terms can by no stretch of imagination affect in any manner or to any decree or extent the rights of the Appellant i.e. Defendant No.2. The consent terms do not and shall not operate to the prejudice of the Appellant either in the present proceedings or any other proceedings or in any other manner whatsoever. Nor will the same affect the rights of the Appellant to continue or adopt proceedings in respect of his alleged rights qua the suit property. With this clarification, the Appeal is disposed of.

5. The Appellant however, is entitled to costs of the suit. By not having given him notice of the withdrawal of the suit the Appellant has been deprived of an opportunity of making an application for costs. In the circumstances, the Plaintiffs i.e. Respondent Nos.1 and 2 shall pay the costs of the suit to the Appellant fixed at Rs.15,000/-.